

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**NEW YORK SMSA LIMITED
PARTNERSHIP d/b/a VERIZON
WIRELESS, NEW CINGULAR
WIRELESS PCS, LLC, SPRINT
SPECTRUM L.P., and OMNIPOINT
COMMUNICATIONS, INC. a wholly
owned subsidiary of T-MOBILE USA,
INC.,**

Plaintiffs,

v.

**TOWN OF CLARKSTOWN, and
THE TOWN BOARD OF THE TOWN
OF CLARKSTOWN,**

Defendants.

Case No. 07-cv-7637 (CLB) (GAY)

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Michael A. Lampert, Esq. (ML 1064)
Karl J. Nelson, Esq. (Pro Hac Vice)
SAUL EWING, LLP
750 College Road East, Suite 100
Princeton, New Jersey 08540-6617
Tel.: 609.452.3123
Fax: 609.452.3125

***Attorney for Plaintiff
Omnipoint Communications, Inc.***

Gregory D. Meese, Esq. (GDM 8738)
PRICE, MEESE, SHULMAN &
D'ARMINIO, P.C.
50 Tice Boulevard
Woodcliff Lake, NJ 07677
Tel: 201.391.3737

***Attorney for Plaintiff
Sprint Spectrum L.P.***

Andrew G. McBride, Esq. (AM1966)
John E. Barry, Esq. (JB 1776)
Joshua S. Turner, Esq. (Pro Hac Vice)
WILEY REIN LLP
1776 K Street, NW
Washington, DC 20006
Tel.: 202.719.7000
Fax: 202.719.7049

***Attorneys for Plaintiff
New York SMSA L. P. d/b/a Verizon
Wireless***

Christopher B. Fisher, Esq. (CF 9494)
CUDDY & FEDER LLP
445 Hamilton Avenue, 14th Floor
White Plains, New York 10601
Tel.: 914.761.1300
Fax: 914.761.5372

***Attorney for Plaintiff
New Cingular Wireless PCS, LLC***

Pursuant to Rule 56 of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”), Plaintiffs New York SMSA Limited Partnership, d/b/a Verizon Wireless (“Verizon Wireless”), New Cingular Wireless PCS, LLC (“AT&T”), Sprint Spectrum L.P. (“Sprint”), and Omnipoint Communications, Inc. a wholly owned subsidiary of T-Mobile USA, Inc. (“T Mobile”) (collectively, the “Wireless Carriers” or “Plaintiffs”),¹ by and through their respective counsel, hereby respectfully move this Court for the entry of an order granting summary judgment in their favor, and against Defendants Town of Clarkstown and the Town Board of Clarkstown (collectively, the “Town” or “Defendants”). There is no genuine issue of material fact and, as set forth more fully in the accompanying Plaintiffs’ Memorandum of Law in Support of Their Motion for Summary Judgment, as a matter of law Plaintiffs are entitled to a declaration that Chapter 251 of the Clarkstown Town Code, as amended by Local Law No. 14, enacted July 26, 2007 and entitled “A Local Law to Amend Chapter 251 (Wireless Communications Facilities) of the Town Code of the Town of Clarkstown” (“Chapter 251”), is preempted by federal law and invalid in its entirety.

WHEREFORE, for the foregoing reasons and those stated in Plaintiffs’ Memorandum of Law in Support of Their Motion for Summary Judgment, Plaintiffs respectfully requests that this Court enter an order granting summary judgment in their favor and against Defendants.

¹ Counsel for Verizon Wireless file this Plaintiffs’ Motion for Summary Judgment and the accompanying Plaintiffs’ Memorandum of Law in Support of Their Motion for Summary Judgment with the consent of the other Plaintiffs in this case.

Respectfully submitted,

By: /s/ Andrew G. McBride
Andrew G. McBride, Esq. (AM1966)
John E. Barry, Esq. (JB 1776)
Joshua S. Turner, Esq. (Pro Hac Vice)
WILEY REIN LLP
1776 K Street, NW
Washington, DC 20006
Tel.: 202.719.7000
Fax: 202.719.7049
Attorneys for Plaintiff
New York SMSA Limited Partnership d/b/a
Verizon Wireless

Christopher B. Fisher, Esq. (CF 9494)
CUDDY & FEDER LLP
445 Hamilton Avenue, 14th Floor
White Plains, New York 10601
Tel.: 914.761.1300
Fax: 914.761.5372
Attorney for Plaintiff
New Cingular Wireless PCS, LLC

Gregory D. Meese, Esq. (GDM 8738)
PRICE, MEESE, SHULMAN &
D'ARMINIO, P.C.
50 Tice Boulevard
Woodcliff Lake, NJ 07677
Tel: 201.391.3737
Attorney for Plaintiff
Sprint Spectrum L.P.

Michael A. Lampert, Esq. (ML 1064)
SAUL EWING, LLP
750 College Road East
Suite 100
Princeton, New Jersey 08540-6617
Tel.: 609.452.3123
Fax: 609.452.3125
Attorneys for Plaintiff
Omnipoint Communications, Inc.

Dated: This 11th day of January, 2008.